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09/913,635	12/11/2001	Helmut Ruckert	AP9673	3938
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RADER, FISHMAN & GRAUER PLLC 39533 WOODWARD AVENUE SUITE 140 BLOOMFIELD HILLS, MI 48304-0610			PEZZLO, BENJAMIN A	
			ART UNIT	PAPER NUMBER
			3683	

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 20052004

Application Number: 09/913,635
Filing Date: December 11, 2001
Appellant(s): RUCKERT ET AL.

Mr. Peter Rashid
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 29 April 2004.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

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(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 30-36 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

DE19705803	Winter	8-1998
5,816,370	Verbeteen	10-1998

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 34 is rejected under 35 U.S.C. 112. This rejection is set forth in prior Office Action, 17 October 2003.

Claims 19, 28, 29, and 31-35 are rejected under 35 U.S.C. 102(b). This rejection is set forth in prior Office Action, 17 October 2003.

Claims 30 and 36 are rejected under 35 U.S.C. 102(b). This rejection is set forth in prior Office Action, 17 October 2003.

(11) Response to Argument**A. Claim 34 Fails to Satisfy The Requirements of 35 USC Section 112, Second Paragraph**

Although Appellant argues that the U-shaped portions are portions of the spring, claim 34 positively recites these elements being part of the brake pad, i.e. the preamble recites, "The brake pad . . . comprising". Moreover, a brief review of Fig. 3a shows that elements 13b and 13c fit the bill: they are two generally U-shaped portions included on the brake pad. At the very least, and as indicated in the Final Rejection, it is unclear what the two generally U-shaped portions are portions of.

B. Claims 19, 28, 29, and 31-35 Are Anticipated by Winter

Appellants strongly disagree with the assertion that claims 31 and 32 are silent as to whether the elements (claim 31) or portions (claim 32) are separate from each other.

Please note Appellant's Fig. 3a in light of claims 32 and claim 34. Assume *arguendo* that Applicant intends the U-shaped portions of claim 34 to indeed be portions of the spring. It necessarily follows that these U-shaped portions may be absent from the combination of claim 32. Therefore, a spring according to Appellant's claim 32 may be configured to look exactly like the spring shown in Fig. 1 of Winter. Specifically, claim 32 is silent with respect to whether the elements or portions are separate from each other. Stated conversely, claims 31 and 32 read on a spring having portions or elements which are part of the same wire. Indeed, Appellant's spring is made from a single wire, as shown in Fig. 3a, and Winter's spring is made from a single wire, as shown in Fig. 1.

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Appellant has cited Webster: "an element is a distinct part of a composite device".

Regardless of whether the term distinct part or element or portion is used, the structure of Winter meets the combination of claims 31 and 32. To further elucidate, it is useful to view the transverse cross-section of Winter's piston shown in Fig. 1 as a clock. Thus, a distinct part or element or portion of Winter's spring is located at 9 o'clock and a distinct part or element or portion of Winter's spring is located at 3 o'clock. These distinct parts, elements or portions are thus opposite each other with respect to the piston axis and each applies an axial force at a contact point location at opposite sides of the piston to urge the brake pad against the piston. Moreover, a distinct part or element or portion of Winter's spring is located at 6 o'clock. This distinct part, element or portion is located at one contact point location in a vertical direction which is generally perpendicular to the piston axis according to the combination of claims 31 and 32. Thus, claims 31 and 32, as well as claims 19, 28, 29, and 33-35 are anticipated by Winter.

C. Claims 30 and 36 Are Obvious In View of Winter and Verbeeten

After agreeing that Winter fails to disclose a retainer plate configured as a damping plate, Appellant reverts to an argument regarding the spring. Importantly however, Verbeeten is relied upon to teach a retainer plate configured as a damping plate. It would have been obvious to one of ordinary skill in the art to which the invention pertains at the time the invention was made to have included a retainer plate configured as a damping plate according to the teachings of Verbeeten et al. in order to provide the Winter assembly with noise damping properties.

Moreover, see col. 3 lines 30-34, Verbeeten does indeed fasten the spring to the carrier and support plate via rivet 14.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Benjamin A. Pezzlo
5/20/04

Benjamin A Pezzlo
Examiner
Art Unit 3683

BAP

May 20, 2004

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